

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERNARD ROSS HANSEN and
DIANE RENEE ERDMANN,

Defendants.

Case No.: CR18-092RAJ

JOINT DEFENSE MEMORANDUM
RE: STATUS HEARING

This complex case is scheduled for a Status Hearing on Tuesday, November 6, 2018. Per the Court's request, the defense will be prepared to address the following issues with the Court:

1. Discovery and the Trial Date

As stated in the last Status Hearing, the defense anticipates the need to move for a new trial date. Per the original motion to move the trial date, the date agreed upon by the parties was based on the Government's representation of the volume of discovery and its estimate of the time necessary for the defense to effectively prepare for trial. Dkt. 25. Although the Government believes the February trial date is realistic, the defense disagrees and the Government will not object to a continuance.

1 First, although the parties continue to work diligently in the discovery process, the
2 discovery process is not complete. Second, the volume of discovery is extraordinary. In
3 June, the defense noted that discovery at that time including many audio recordings and
4 over 70,000 numbered pages, over 60,000 of which are protected and cannot be produced
5 to the client outside the office. Dkt. 35 n. 16. Since then, the Government has produced
6 approximately 111,000 additional numbered pages of discovery and 2,645 audio files,
7 taken control of over approximately 1,420 boxes from the Nevada warehouse that was
8 subject of earlier litigation, and hopes to produce in the near future mirror images of
9 servers for the Mint that should reflect not only the transactions that the Mint conducted
10 up to the time of the bankruptcy but also the Trustee's liquidation of the Mint since he
11 assumed control in April 2016. It is hard to estimate the amount of data that will be on
12 the mirror images of these servers because it will include data going back several years,
13 but it certainly will be at least a terabyte of data.

15 Most recently, the parties received about 90,000 pages of legal documents¹ that
16 counsel must review to determine if they should be withheld from the Government
17 pursuant to the attorney-client privilege. Related thereto, the parties are scheduled to meet
18 with the Government at the Federal Bureau of Investigation to review an additional 16
19 file-cabinets and six boxes on November 13, 2018. In addition, we have received the
20 defendant's hard drives (containing 4198 files—113 gigabytes), including days of
21 surveillance footage of the Mint vaults to be reviewed.

23 Moreover, although the Government's index gives the impression that, despite the
24 volume, the discovery is straight forward and easily reviewed, in truth, the discovery
25 production is a rabbit warren.

26 As previously noted, the February trial date was picked only as a placeholder
27 based on the Government's guestimate of the time it would take the it to produce

28 ¹ Estimating the volume of discovery is difficult because some documents have attachments and some are Excel spreadsheet files with an extraordinary number of sheets and data.

1 discovery and for defense counsel to review the materials, resolve discovery issues and
2 conduct its own investigation in preparation for trial, before the need to file any pretrial
3 motions.² Despite the exercise of due diligence, the Government's guestimate proved
4 overly optimistic. The defense therefore, believe the February date is unrealistic, keeping
5 in mind the above facts and the need for adequate time for counsel to fully and
6 adequately review the discovery with their respective clients, as well as any and all
7 factual and legal issues presented, and sentencing consequences so they can effectively
8 prepare for trial and Ms. Erdmann and Mr. Hansen can each make an informed and
9 intelligent decision of how to proceed.
10

11 The defense intends to file the motion by the end of the month, once it has had the
12 opportunity to confer with the Government regarding a complex case scheduling order
13 regarding deadlines for discovery, including *Jencks*, expert witnesses and other critical
14 components to effective preparation for trial and a fair trial and a better understanding of
15 the discovery and issues presented. Counsel for Ms. Erdmann is also expected to be in
16 trial on February 19, 2019 in *United States v. Taylor*, CR 16-300RSL and that trial is
17 expected to take approximately 10 days.
18

19 **2. Motions Pending**

20 The defense filed a motion to prevent spoliation of evidence. Dkt. 30. The parties
21 filed a stipulation regarding the resolution of that motion, Dkt. 47, which the Court
22 signed on October 12, 2018. Dkt. 48.

23 The defense has also filed a motion for a narrowly defined gag order. Dkt. 39. The
24 issue has now been briefed by the parties. *See* Dkt. 43 (Govt. Response); Dkt 44 (Mark
25 Calvert Response) and Dkt. 46 (Defense Reply). The parties will be prepared to address
26 the motion at the status hearing.
27

28 ² Counsel for Ms. Erdman stated at the time that the February 2019 trial date was clearly not possible given the amount of discovery in the case and the resources available to him.

3. Password.

The Government has provided the defense with a mirror image of Mr. Hansen's personal computer, and the Government will eventually provide the defense copies of the servers related to the Mint operations.

Mr. Hansen however, would like the password to the current Mint computer system so that he can access his email and files he has saved therein. The defense has requested the password from the Government and counsel for the Trustee. The Government advised that it does not have the password. The Trustee never responded to the request for the password. It is anticipated that Mr. Hansen would like to be heard regarding his hope that this Court compel the Government and/or Trustee to provide the password.

The defense is not aware of the any other issues that require the Court's intervention or oversight at this time.

Respectfully submitted this 2nd day of November, 2018.

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s/ Dennis P. Carroll
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Certificate of Service

I hereby certify that on November 2, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to counsel for other parties of record.

/s Alma R Coria
Senior Legal Assistant